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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/901,338	07/28/97	KEESMAN G	PHB-33946A

LM11/0202

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EXAMINER	
RAO, A	

ART UNIT	PAPER NUMBER
2713	28

DATE MAILED: 02/02/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/901,338	Applicant(s) Keesman
	Examiner Anand Rao	Group Art Unit 2713

☒ Responsive to communication(s) filed on *Oct 26, 1998*.

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-12 and 14* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-12 and 14* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on *Jul 28, 1997* is ☒approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Part III DETAILED ACTION

Response to Amendment

1. Applicant's arguments filed on 10/26/98 in Paper 27 with respect to the pending Double Patenting and obviousness type double patenting rejections concerning claims 1, 5, 12 as not being patently distinct from claim 3 of US Patent 5,606,369 were found to be persuasive, and those rejections are withdrawn.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 1-12 and 14 rejected under 35 U.S.C. § 102(e) as being anticipated by Kirayama, as was set forth in the Office Action mailed as Paper 28 mailed on 6/23/98.

4. Applicant's arguments filed on 10/26/98 in Paper 27 with respect to the Examiner's pending rejection of claims 1-12, and 14 under 35 U.S.C. § 102(e) as being anticipated by Kirayama have been fully considered but they are not persuasive.

The Applicant presents one argument contending the Examiner's rejection of claims 1-12 and 14 rejected under 35 U.S.C. § 102(e) as being anticipated by Kirayama. However, after carefully reviewing the argument, and further scrutinizing the reference, the Examiner must respectfully disagree, and maintain the grounds of rejection for the reasons that follow.

The Applicant argues that Kirayama disclosure of reading out of the buffer memory with a predetermined common length, and thus would not be determined as a percentage of the read in bit rate as in the instant invention. The Examiner respectfully disagrees. While the video time slot data length is predetermined or constant, the delay or read-out timing as supplied by the buffer read controller (Kirayama: column 6, lines 47-51) based upon the of the detected delay varies (Kirayama: column 6, lines 53-61), such that the system is treated as a variable bit rate system (Kirayama: column 6, lines 8-15). What Kirayama does disclose is that the system and method manipulates the output time in accordance with the detected delay (Kirayama: column 10, lines 15-25). The delay is the encoder delay + the buffer read out delay = THV, where the THV is the allowable delay of the system and is set threshold which is constant. Accordingly, if the encoder delay increases, the buffer read-out delay is made to decrease in order to keep that timing relation fixed. Likewise if the encoder delay decreases, the buffer read is made to increase. That is where the inverse relationship is established. Since there is a direct correlation of the with this timing manipulation to the "bit-rates", the Examiner maintains that this process sufficiently reads on the recited "determining the output bit rate as a percentage of the read in bit rate..." as in the instant invention.

For the reasons discussed above, the Examiner maintains the grounds of rejection.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anand S. Rao whose telephone number is (703)-305-4813 .

TOMMY P. CHIN
SUPERVISORY PATENT EXAMINER
GROUP 2700

asr

January 29, 1999